

| Metropolitan/Regional Transportation<br>Planning Organization Agreement |          |              | Term of Agreement |          |               |
|---|----------|--------------|-------------------|----------|---------------|
|   |          |              | Start Date        | End Date | Fiscal Period |
| Agreement Number  | CFDA No. | WSDOT Region |                   |          |               |
| Lead Planning Agency Name and Address                                   |          |              |                   |          |               |
| County(ies) Included in the MPO / RTPO                                  |          |              |                   |          |               |

This AGREEMENT, made and entered into on the start date listed above, between the STATE OF WASHINGTON, Department of Transportation, acting by and through the Assistant Secretary for Planning and Programming Service Center, hereinafter called the "STATE," and the above named Metropolitan Planning Organization/Regional Transportation Planning Organization, hereinafter called the "MPO/RTPO."

WHEREAS, the above named county(ies) has created a regional transportation planning organization in accordance with the requirements set forth in [RCW 47.80.020](#); and

WHEREAS where the above named county(ies) includes urban areas with a population in excess of fifty thousand individuals, a metropolitan planning organization has been designated for each urban area pursuant to Title [23 USC Section 134](#). (Title 23, Chapter 1, Subchapter I, Section 134)

WHEREAS, the STATE has funds available, allocated in part through the United States Department of Transportation, hereinafter called "USDOT," Federal Highway Administration, hereinafter called "FHWA," and the Federal Transit Administration, hereinafter called "FTA," and/or STATE RTPO funds, and possibly funds from other Federal or state agencies which can be used to facilitate urban and regional transportation planning.

### I Work Scope and Budget

The work scope and budget for this Agreement shall be documented annually in a Unified Planning Work Program hereinafter called "UPWP." The UPWP shall be adopted by the MPO/RTPO and submitted to the state prior to May 31 preceding the start of each subject fiscal year.

The STATE will inform the MPO/RTPO of expected allocations of FHWA Planning funds (PL funds) and FTA Section 5303 funds (when administered by the STATE), STATE RTPO funds and any other STATE administered funds that are available to MPO/RTPOs by December 31 each year for the following fiscal year. The MPO/RTPO will then prepare a draft UPWP and submit the draft to the STATE by March 16 each year for the following fiscal year. However, the MPO/RTPO may prepare a two year UPWP if they desire. Amendments to the two year UPWP will be required in order to authorize expenditure of all federal funding and to manage federal obligation authority.

The UPWP shall document all transportation and related planning activities for the ensuing fiscal year, July 1 to June 30. The UPWP shall include for each work element a description of the proposed work, an indication of the agency performing the work, and a budget which itemizes funding sources by work element and task. Local match shall be itemized separately. The local match required for FHWA PL funds and [FTA Section 5303](#) will be based on a blended ratio as provided for in the Consolidated Planning Grant Program. The blended ratio will be determined by the state and forwarded to each MPO/RTPO when federal funds are obligated. Each MPO/RTPO will have a unique match ratio. The blended match ratio will be recalculated when new FTA Section 5303 funds or FHWA PL funds are added to an MPO/RTPO UPWP. Under no circumstances shall the MPO/RTPO required match amount be less than the required 13.5% match for FHWA PL funds and the 20% match for [FTA Section 5303](#) funds if determined separately.

The STATE shall notify the MPO/RTPO by letter of its approval of the UPWP for the subject fiscal year. The MPO/RTPO shall perform the approved work tasks within the approved budget during the subject fiscal year. The STATE's letter of approval incorporates the adopted UPWP and budget for the subject fiscal year.

### II Planning Standards and Guidelines

The MPO/RTPO shall comply with the Planning Standards and Guidelines developed by the STATE for the Regional Transportation Planning Program, and any amendments made thereto. In addition, the MPO must comply with [23 CFR, Part 450](#) and [49 CFR, Part 613](#) "Planning Assistance and Standards."

### III Conservation

The MPO/RTPO shall recognize mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act ([42 USC Section 6321](#) et seq.) (Title 42, Chapter 77, Subchapter III, Part B, Section 6321).

#### **IV Payment**

The STATE agrees to reimburse the MPO/RTPO's actual direct and related indirect costs of work approved as part of the UPWP. The maximum amount that the STATE shall reimburse the MPO/RTPO shall not exceed the total approved FHWA, FTA, and STATE RTPO funding included in the UPWP approval letter and contained in an adopted UPWP. All costs must be consistent with the federal cost principles contained in [OMB Circular A-87](#) or its replacement.

All indirect costs will be based on an indirect cost rate supported by a STATE accepted indirect cost allocation plan. Annually, the MPO/RTPO shall prepare an indirect cost allocation plan which covers all anticipated indirect costs for the current calendar year, plus any carryover from the previous calendar year. The STATE will not reimburse any indirect costs not covered by an approved MPO/RTPO indirect cost allocation plan.

The MPO/RTPO shall submit to the STATE requests for funds as they are expended on UPWP activities, but not to exceed one such request every month. Such requests for reimbursement shall document the amount of funds that have been expended during the period for the total project, as well as for the current billing period. The STATE shall review and approve each request for payment in an expeditious manner and shall make payment within 30 days after approval of the payment request.

#### **V Reports**

The MPO/RTPO shall, from time to time during the progress of the work, confer with the STATE. The MPO/RTPO shall prepare and present to the STATE an annual progress report. The report shall be completed and submitted to the STATE within 30 calendar days following the end of each fiscal year. The STATE however, reserves the right to request an interim report(s) during the fiscal year. The interim report(s) is due to the STATE within 21 calendar days of being notified in writing by the STATE. The interim report(s) shall include a summary of work progress during the course of the fiscal year, costs incurred in accordance with the approved UPWP and budget, and progress to date, including any problems or work delays. The STATE may delay reimbursement of billings if the requested interim report(s) is not submitted in a timely manner.

Within 30 days after the conclusion of each fiscal year, the MPO/RTPO shall prepare and submit to the STATE a final progress report. This final report shall summarize work accomplished under the UPWP, costs incurred by work element, and shall identify any carryover of funds.

#### **VI Assignment of Work Items**

The work items may be accomplished by joint effort between the staff of the MPO/RTPO, the STATE, and/or local government agencies. Such assignment will be clearly listed in the UPWP.

#### **VII Project Records**

MPO/RTPO shall establish and maintain books, records, documents, and other evidence and accounting procedures and practice, sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred and

anticipated to be incurred for the performance of this Agreement. To facilitate the administration of the Project, separate accounts shall be established and maintained within MPO/RTPO's existing accounting system or set up independently. Such accounts are referred to herein collectively as the "Project Account."

MPO/RTPO shall charge to a Project Account all eligible costs of the Project. Costs in excess of the latest approved budget or attributable to actions which have not received the written approval of the STATE, shall not be eligible costs. All costs, charged to the Project, including any approved services contributed by MPO/RTPO or others, shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

#### **VIII Audits, Inspection, and Retention of Records**

The STATE, the USDOT, FTA, FHWA, the State Auditor, and the Inspector General and any of their representatives shall have full access to and the right to examine, during normal business hours and as often as they deem necessary, all of the MPO/RTPO's records with respect to all matters covered by this Agreement. Such representatives shall be permitted to audit, examine, and make excerpts or transcripts from such records and to make audits of all contracts, invoices, materials, payrolls, and other matters covered by this Agreement. All documents, papers, accounting records, and other material pertaining to costs incurred in connection with the Project shall be retained by the MPO/RTPO for three years from the date of completion of the Project to facilitate any audits or inspections.

Furthermore, if any litigation, claim, or audit arising out of, in connection with, or related to this Agreement is initiated before the expiration of the three-year period, the cost records and accounts shall be retained until such litigation, claim, or audit involving the records is completed. In accordance with [OMB Circular A-133](#) regulations, the MPO/RTPO is required to arrange for audit of funds expended. All MPO/RTPOs expending \$300,000 or more of federal funds in a year must have an annual audit in accordance with [OMB Circular A-133](#).

#### **IX Modifications**

Either party may request changes in these provisions. Work scope and budget changes shall be made by written amendment to the UPWP by the MPO/RTPO and approved in writing by the STATE. Other changes to this Agreement which are mutually agreed upon shall be incorporated as written amendments to this Agreement. No variation or alteration of the terms of this Agreement shall be valid unless made in writing and signed by authorized representatives of the parties hereto.

#### **X Termination**

This Agreement expires on the date shown in the Terms of Agreement heading. If it is determined to be in the best interests of the STATE, the STATE may terminate this Agreement upon giving ten (10) days notice in writing to the MPO/RTPO. If this Agreement is so terminated prior to fulfillment of the terms stated herein, the MPO/RTPO shall be reimbursed only for actual expenses and noncancelable obligations, both direct and indirect, incurred to the date of termination.

## **XI Travel**

Current STATE travel rates shall apply to all in-state and out-of-state travel for which reimbursement is claimed during the term of this Agreement. Reimbursement of travel expenses is limited to travel necessary for the completion of the UPWP.

## **XII Subcontracting and Equipment**

The services of the MPO/RTPO are to be directed by a Project Manager. The MPO/RTPO shall not assign, sublet, or transfer any of the work provided for under this Agreement without prior written approval from the STATE, and the STATE shall review and approve the MPO/RTPO's consultant agreement prior to execution. The MPO/RTPO shall comply with all current federal and state laws and regulations governing the selection and employment of consultants. The STATE reserves the right to appoint a representative to serve on the Consultant Selection Committee. Subcontracts for consultant services must contain all the required provisions to the extent applicable of Sections III, V, VIII, XI, XIII through XV, and XIX through XXII of this Agreement.

Any equipment to be purchased under this Agreement shall be listed in the scope of work. All equipment must be purchased, managed, and disposed of in accordance with all current federal and state laws and regulations and the nondiscrimination provisions of Section XVIII of this Agreement. The procurement of all equipment must be used for the sole purpose of urban and regional transportation planning activities.

## **XIII Purchases**

The MPO/RTPO or consultant shall make purchases of any equipment, material, incidental goods or supplies pursuant to this Agreement through procurement procedures approved in advance by WSDOT and consistent with the following provisions:

**General Procurement Requirements.** The MPO/RTPO or consultant shall comply with the procurement procedures identified in [FTA circular 4220.1D](#), "Third Party Contracting Requirements," and any revision or replacement thereof; and applicable Federal regulations or requirements identified in [49 CFR, Part 18](#), "Uniform Administrative Requirements," and any amendments thereof, which by this reference are incorporated herein; any reference therein to "grantee" shall mean the MPO/RTPO or consultant.

**A. Preference for United States Products and Services.** To the extent applicable, the MPO/RTPO or consultant agrees to comply with the following requirements:

1. **Buy America.** The MPO/RTPO or consultant shall comply with [49 U.S.C. 5323\(i\)](#) (Title 49, Subtitle III, Chapter 53, Section 5323) and [49 CFR Part 661](#), and with implementing guidance USDOT may issue.
2. **Cargo Preference - Use of United State Flag Vessels.** The MPO/RTPO or consultant agrees to comply with U.S. Maritime Administration regulations "Cargo Preference - U.S. Flag Vessels" [49 CFR Part 381](#) to the extent those regulations apply to the project.
3. **Fly America:** The MPO/RTPO or consultant understands and agrees that the Federal Government will not participate in the costs of international air transportation of any person involved in or property acquired for the project unless that air transportation

is provided by U.S. flag air carriers to the extent service by U.S. flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, [49 U.S.C section 40118](#), (Title 49, Subtitle VII, Part A, Subpart I, Chapter 401, Section 40118) and with U.S. GSA regulations, "Use of United State Flag Air Carriers," [41 CFR sections 301-10-131. - through 301-10.143.](#)

**B. Geographic Restrictions.** The MPO/RTPO or consultant agrees to refrain from using any State or local geographic preference, except those expressly mandated or encouraged by Federal statute or as permitted by USDOT.

**C. Government Orders.** In case any lawful government authority shall make any order with respect to the Project or Project equipment, or any part thereof, or the parties hereto or either of them, the MPO/RTPO or consultant shall cooperate with WSDOT in carrying out such order and will arrange its operation and business so as to enable WSDOT to comply with the terms of the order.

## **XIV Incorporation of Federal Terms**

**A. Purchasing.** This Agreement's provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in this Agreement's provisions. All contractual provisions required by FTA, as set forth in FTA Circular 4220.1D, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The MPO/RTPO or consultant shall not perform any act, fail to perform any act, or refuse to comply with any WSDOT request which would cause WSDOT to be in violation of any USDOT term or condition.

**B. Federal Changes.** The MPO/RTPO or consultant shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including but not limited to those listed directly or by reference in the Agreement as they may be amended or promulgated from time to time, by FTA, during the term of this Agreement. The MPO/RTPO or consultant failure to so comply shall constitute a material breach of this Agreement.

## **XV No Obligation by the Federal Government**

A. WSDOT and the MPO/RTPO or consultant acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of this Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the MPO/RTPO or consultant or any other party (whether or not a party to this Agreement) pertaining to any matter resulting from this Agreement.

B. No contract between the MPO/RTPO or consultant shall create any obligation or liability of WSDOT with regard to this Agreement without WSDOT's specific written consent, notwithstanding its concurrence in, or approval of, the award of any contract or subcontract or the solicitations thereof. The MPO/RTPO or consultant hereby agrees to include this provision in all contracts it enters into for the employment of any individuals, procurement of any materials, or the performance of any work to be accomplished under this Agreement.

## XVI Personal Liability of Public Officers

No officer or employee of WSDOT shall be personally liable for any acts or failure to act in connection with the Agreement, it being understood that in such matters they are acting solely as agents of WSDOT.

## XVII Ethics

**Code of Ethics.** The MPO/RTPO or consultant agrees to maintain a written code or standard of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts supported by Federal assistance. The code or standard shall provide that the MPO/RTPO or consultant's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential contractors or subrecipients. The MPO/RTPO or consultant may set minimum rules where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. These codes or standard shall all prohibit the MPO/RTPO or consultant's officers, employees, board members, or agents from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, such code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the MPO/RTPO or consultant's officers, employees, board members, or agents, or by subcontractors or subrecipients or their agents.

**A. Personal Conflict of Interest.** The MPO/RTPO or consultant's code or standard shall prohibit the MPO/RTPO or consultant's employees, officers, board members, or agents from participating in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the parties set forth below has a financial or other interest in the firm or entity selected for award:

1. The employee, officer, board member, or agent;
2. Any member of his or her immediate family;
3. His or her partner; or
4. An organization that employs, or is about to employ, any of the above.

**B. Organizational Conflict of Interest.** The MPO/RTPO or consultant code or standard of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or impair its objectivity in performing the contract work.

**Debarment and Suspension.** The MPO/RTPO or consultant agrees to comply with the requirements of Executive Orders Numbers 12549 and 12689, "Debarment and Suspension," [31 U.S.C. § 6101](#) note, and USDOT regulations on Debarment and Suspension at [49 CFR Part 29](#), Environmental Protection Agency [40 CFR 32](#), Federal Emergency Management Agency [44 CFR 17](#), and U.S. Department of Health and Human Services [45 CFR 76](#). MPO/RTPO or consultants are prohibited from contracting with or making subawards to parties that are suspended or

debarred or whose principals are suspended or debarred. Covered transactions include procurement contracts for goods and services equal to or in excess of \$100,000 and all non-procurement transactions (e.g. awards to subrecipients). MPO/RTPO or consultants receiving individual awards for \$100,000 or more and all subrecipients must certify that the organization and its principals are not suspended or debarred. A MPO/RTPO or consultant may rely on that certification unless it knows that it is erroneous. MPO/RTPO or consultants may check for suspended or debarred parties in the List of Parties Excluded From Federal Procurement or Non-procurement Programs issued by the U.S. General Services Administration. A list of parties excluded is available on the GSA website at [www.arnet.gov/epls](http://www.arnet.gov/epls).

**Bonus or Commission.** The MPO/RTPO affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its application for Federal financial assistance for this Project.

**Relationship with Employees and Officers of WSDOT.** The MPO/RTPO or consultant shall not extend any loan, gratuity or gift of money in any form whatsoever to any employee or officer of WSDOT, nor shall the MPO/RTPO or consultant rent or purchase any equipment and materials from any employee or officer of WSDOT.

**Employment of Former WSDOT Employees.** The MPO/RTPO or consultant hereby warrants that it shall not engage on a full, part-time or other basis during the period of the Agreement, any professional or technical personnel who are, or have been, at any time during the period of the Agreement, in the employ of WSDOT without written consent of WSDOT.

**Restrictions on Lobbying.** The MPO/RTPO or consultant agrees to:

- A. Refrain from using Federal assistance funds to support lobbying; and
- B. Comply, and assure compliance by each subcontractor at any tier and each subrecipient at any tier, with applicable requirements of USDOT regulations, "New Restriction on Lobbying," [49 CFR Part 20](#), modified as necessary by [31 U.S.C. §1352](#) (Title 31, Subtitle II, Chapter 13., Subchapter III, Section 1352).
- C. Comply with Federal statutory provisions to the extent applicable prohibiting the use of Federal assistance funds for activities designed to influence Congress or a State legislature on legislation or appropriations, except through proper, official channels.

**Employee Political Activity.** To the extent applicable, the MPO/RTPO or consultant agrees to comply with the provisions of the "Hatch Act," [5 U.S.C. §§ 1501 - 1508](#) (Title 5, Part II, Chapter 15, Sections 1501-1508), [7324 - 7326](#) (Title 5, Part III, Subpart F, Chapter 73, Subchapter III, Sections 7324-7326), and Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," [5 CFR Part 151](#). 5-cThe "Hatch Act" limits the political activities of State and local agencies and their officers and employees, whose principal employment activities are financed in whole or in part with Federal funds including a loan, grant, or cooperative agreement. Nevertheless, in accordance with [23 U.S.C. § 142\(g\)](#) (Title 23, Chapter 1, Subchapter I, Section 142) the "Hatch Act" does not apply to a nonsupervisory employee of a transit system (or of any other agency or entity performing related functions) receiving FTA assistance to whom the "Hatch Act" does not otherwise apply.



**False or Fraudulent Statements or Claims.** The MPO/RTPO or consultant acknowledges and agrees that the Program Fraud Civil Remedies Act of 1986, as amended, [31 U.S.C. §§ 3801](#) et seq. (Title 31, Subtitle III, Chapter 38-- Section 3801), and USDOT regulations, "Program Fraud Civil Remedies," [49 CFR Part 31](#), apply to its activities in connection with this Project. Accordingly, by executing this Agreement the MPO/RTPO or consultant certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make in connection with the Project covered by this Agreement. In addition to other penalties that WSDOT reserves the right to impose on the MPO/RTPO or consultant, the MPO/RTPO or consultant also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to WSDOT or the Federal Government, WSDOT and the Federal Government, each, reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the MPO/RTPO or consultant to the extent either deems appropriate.

## XVIII Civil Rights

The MPO/RTPO or consultant shall comply with all applicable civil rights statutes and implementing regulations including, but not limited to:

**Nondiscrimination in Federal Transit Programs.** The MPO/RTPO or consultant agrees to comply, and assures compliance by each third party contractor at any tier, with the provisions of [49 U.S.C. § 5332](#) (Title 49, Subtitle III, Section 5332), which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

**Nondiscrimination--Title VI of the Civil Rights Act.** The MPO/RTPO or consultant agrees to comply, and assures compliance by each third party contractor at any tier, with all requirement prohibiting discrimination on the basis of race, color, or national origin, Pursuant to Title VI of the Civil Rights Act of 1964, as amended, [42 U.S.C. 2000d](#) (Title 42, Chapter 21, Subchapter V, Section 2000d); and USDOT regulations, "Nondiscrimination in Federally Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," [49 CFR Part 21](#), and any implementing requirements FTA may issue.

**Equal Employment Opportunity.** The MPO/RTPO or consultant agrees to comply, and assures compliance by each third party contractor at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, [42 U.S.C. § 2000e](#), (Title 42, Chapter 21, Subchapter VI, Section 2000e) and [49 U.S.C. §5332](#) (Title 49, Subtitle III, Section 5332), and any implementing requirements FTA may issue. These equal employment opportunity (EEO) requirements include, but are not limited to, the following:

A. The MPO/RTPO or consultant agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The MPO/RTPO or consultant agrees to take affirmative action to ensure that applicants are employed and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The MPO/RTPO or consultant shall also comply with any implementing requirements USDOT may issue.

B. If the MPO/RTPO or consultant is required to submit and obtain Federal Government approval of its EEO program, that EEO program approved by the Federal Government is incorporated by reference and made part of this Agreement. Failure by the MPO/RTPO or consultant to carry out the terms of that EEO program shall be treated as a violation of this Agreement. Upon notification to the MPO/RTPO or consultant of its failure to carry out the approved EEO program, the Federal Government may impose such remedies as it considers appropriate, including termination of Federal financial assistance, or other measures that may affect the MPO/RTPO or consultant's eligibility to obtain future Federal financial assistance for transportation projects.

**Nondiscrimination on the Basis of Sex.** The MPO/RTPO or consultant agrees to comply with Title IX of the Education Amendments of 1972, as amended, [20 U.S.C. §§1681](#) (Title 20, Chapter 38, Section 1681), et seq., with USDOT regulations "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal financial Assistance," [49 CFR Part 25](#), and with any implementing directives that USDOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

**Nondiscrimination on the Basis of Age.** The MPO/RTPO or consultant agrees to comply with applicable requirements of the Age Discrimination Act of 1975, as amended, [42 U.S.C. §§6101](#) (Title 42, Chapter 76, Section 6101), et seq., and implementing regulations, which prohibits discrimination on the basis of age.

**Access Requirements for Persons with Disabilities.** The MPO/RTPO or consultant agrees to comply with the requirements of [49 U.S.C §5301\(d\)](#) (Title 49, Subtitle III, Chapter 53, Section 5301), which state the Federal policy that the elderly and persons with disabilities have the same rights as other persons to use mass transportation service and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement said policy. The Contractor also agrees to comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, [29 U.S.C. §794](#) (Title 29, Chapter 16, Subchapter V, Section 794), which prohibit discrimination on the basis of handicap; with the Americans with Disabilities Act of 1990 (ADA), as amended, [42 U.S.C. §§12101](#) Title 42, Chapter 126, Section 12101), et seq., which requires the provision of accessible facilities and services; and with the Federal regulations, including any amendments thereto following:

- A. USDOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," [49 CFR Part 37](#);
- B. USDOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," [49 CFR Part 27](#);
- C. Joint U.S. Architectural and Transportation Barriers Compliance Board U.S. DOT regulations; "Americans with Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," [36 CFR Part 1192](#) and [49 CFR Part 38](#);
- D. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," [28 CFR Part 35](#);
- E. U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," [28 CFR Part 36](#);
- F. U.S. GSA regulations, "Accommodations for the Physically Handicapped," [41 CFR Subpart 101-19](#);

- G. U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," [29 CFR Part 1630](#);
- H. U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Custom Premises Equipment for the Hearing and Speech Disabled," [47 CFR Part 64, Subpart F](#);
- I. FTA regulations, "Transportation for Elderly and Handicapped Persons," [49 CFR Part 609](#); and
- J. Any other nondiscrimination statute(s) that may apply to the Project.

**Drug or Alcohol Abuse. Confidentiality and Other Civil Rights Protections.** The MPO/RTPO or consultant agrees to comply with the confidentiality and other civil rights provisions of the Drug Abuse office and Treatment Act of 1972, Pub. L. 92-255, March 21, 1972, as amended; the Comprehensive Alcohol abuse and alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Pub. L. 91-616, December 31, 1970, as amended; and the Public Health Service Act of 1912, as amended, [42 U.S.C. sections 290dd-3](#) (Title 42, Chapter 6A, Subchapter III, Part D, Sections. 290dd-3) and any subsequent amendments to these acts.

**Access to Services for Persons with Limited English Proficiency.** The MPO/RTPO or consultant agrees to comply with applicable Federal guidance issued in compliance with Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000.

**Other Nondiscrimination Statutes.** The MPO/RTPO or consultant agrees to comply with all applicable requirements of any other nondiscrimination statute(s) that may apply to the Project.

## XIX

### Participation of Disadvantaged Business Enterprises

The MPO/RTPO or consultant shall take the following measures to facilitate participation by disadvantaged business enterprises (DBE) in the Project:

The MPO/RTPO or consultant agrees to comply with section 1101(b) of TEA-21, [23 U.S.C. § 101](#) [Title 23, Chapter 1, Subchapter I, Section 102b](#)), note, and USDOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," [49 CFR Part 26](#); and

The MPO/RTPO or consultant agrees that it shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any third party contract, or subagreement supported with Federal assistance derived from the USDOT or in the administration of its DBE program or the requirements of [49 CFR Part 26](#). The MPO/RTPO or consultant agrees to take all necessary and reasonable steps under [49 CFR Part 26](#) to ensure nondiscrimination in the award and administration of all third party contracts and subagreements supported with Federal assistance derived from the USDOT. The MPO/RTPO or consultant DBE program, as required by [49 CFR Part 26](#) and approved by the USDOT, is incorporated by reference and made part of this Agreement. Implementation of the DBE program is a legal obligation, and failure to carry out its terms shall be treated as violation of this Agreement. Upon notification to the MPO/RTPO or consultant of its failure to implement its approved DBE program, the USDOT may impose sanctions as provided for under [49 CFR Part 26](#) and may, in appropriate cases, refer the matter for enforcement under [18 U.S.C. § 1001](#) (Title 18, Part I, Chapter 47, Section 1001), and/or the Program Fraud Civil Remedies Act, [31 U.S.C. §§ 3801](#) (Title 31, Subtitle III, Chapter 38, Section 3801), et seq.

## XX

### General State and Federal Compliance

MPO/RTPO agrees to, and shall provide for such methods of administration for the UPWP Project that are found by the U.S. Secretary of Transportation, or the official to whom the Secretary delegates specific authority, to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to the ACT, the REGULATIONS, and this assurance. MPO/RTPO agrees to comply with the provisions of [49 CFR 18](#), "the Common Rule." MPO/RTPO agrees to comply with such instructions the STATE may issue to comply with the requirements of United States and Washington State law.

Any report or procedure developed by the MPO/RTPO pursuant to this Agreement shall become public property and shall not be subject to copyright.

MPO/RTPO agrees that the United States, any agency thereof, the U.S. Secretary of Transportation and any of the Secretary's designees, have not only the right to monitor the compliance of MPO/RTPO with the provisions of this assurance, but also have the right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this assurance. It is understood by the MPO/RTPO this assurance obligates MPO/RTPO for the period during which federal assistance is extended to the Project.

## XXI

### Legal Relations

Each party to this Agreement shall be responsible for damage to persons or property resulting from negligence on the part of itself, its employees, its agents, or its officers. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any person, firm, or corporation not a party to this Agreement.

## XXII

### Interest of Members of or Delegates to Congress

No member or delegate to the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

## XXIII

### Prohibited Interest

No member, officer, or employee of MPO/RTPO during his or her tenure in office or employment or one year thereafter shall have any interest, direct, or indirect, in this Agreement or the proceeds thereof.

## XXIV

### Labor Provisions

a. **Overtime Requirements.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate of not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such work week.

**b. Violation; Liability for Unpaid Wages; Liquidated Damages.**

In the event of any violation of the clause set forth in paragraph (b)(1) of [29 CFR Section 5.5](#), MPO/RTPO and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such district or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic including watchmen and guards, employed in violation of the clause set forth in subparagraph (b)(1) of [29 CFR Section 5.5](#) in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of [29 CFR Section 5.5](#).

**c. Withholding for Unpaid Wages and Liquidated Damages.**

STATE or MPO/RTPO shall, upon its own action or written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from any moneys payable on account of work performed by MPO/RTPO or subcontractor under any such contract or any contract subject to the contract Work Hours and Safety Standards Act which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (b)(2) of 29 CFR [Section 5.5](#).

**d. Nonconstruction Grants.** MPO/RTPO or subcontractor shall maintain payrolls and basic payroll records during the course of work and shall preserve for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records

METROPOLITAN PLANNING ORGANIZATION/  
REGIONAL TRANSPORTATION PLANNING  
ORGANIZATION

By: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_

Date: \_\_\_\_\_

shall contain the name and address of such employee, social security number, correct classification, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by MPO/RTPO or subcontractor for inspection, copying, or transcription by authorized representatives of the STATE and the Department of Labor, and MPO/RTPO or subcontractor will permit such representative to interview such employees during working hours on the job.

**XXV**

**Independent Contractor**

The MPO/RTPO shall be deemed an independent contractor for all purposes and the employees of the MPO/RTPO or any of its contractors, subcontractors and the employees thereof, shall not in any manner be deemed to be employees of the STATE.

**XXVI**

**Liability**

No liability shall attach to the STATE or the MPO/RTPO by reasons of entering this Agreement except as expressly provided herein.

**XXVII**

**Severability**

If any covenant or provision in this Agreement shall be adjudged void, such adjudication shall not affect the validity, obligation, or performance of any other covenant or provision which in itself is valid, if such remainder would then continue to conform to the terms and requirements of applicable law and the intent of this contract.

**WASHINGTON STATE  
DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Assistant Secretary  
Planning and Programming Service Center

This Agreement was approved as to form by J. William Attridge, Assistant Attorney General, State of Washington on June 13, 2001. Original signature on file with WSDOT  
Assistant Attorney General, State of Washington on June 13, 2001. Original signature on file with WSDOT